

WALMART INC. (“Walmart”) and JETSON ELECTRIC BIKES, LLC (“Jetson”), (collectively “Defendants”), by and through their attorneys, Crowley Fleck PLLP and McCoy Leavitt Laskey LLC, hereby submit their reply in support of their Motion to Exclude Testimony of Jeff Sheaman.

ARGUMENT

Plaintiffs baldly contend that “Sheaman’s opinions meet the reliability standards set forth by Rule 702 [because] he employed reliable methodology, and his opinions are necessary for a jury to understand the technical and scientific nature of design and manufacturing defect as related to this case.” (Doc. 122, pg. 2). However, a conclusory statement about the reliability of Sheaman’s methodology and opinions without explaining how his methodology was scientifically reliable is insufficient to satisfy Rule 702.

In fact, Plaintiffs make no effort to dispute Defendants’ Motion to Exclude Testimony of Jeff Sheaman; rather, Plaintiffs state they “rely upon the filings of Plaintiff in Response to Defendants’ Motion for Summary Judgment”. (Doc. 122, pg. 2). However, a summary judgment motion is a separate and distinct filing from a *Daubert* motion pursuant to Local Rule 7.1.¹ Because Plaintiffs have made no substantial showing to oppose Defendants’ Motion to Exclude Testimony of Jeff Sheaman (Doc. 100 and 101), that motion is conceded and this Court should enter an order barring any fire and cause opinion testimony from Sheaman. *U.S.D.C.L.R. 7.1(b)(1)(B)*. To the extent the Court is inclined to accept the Plaintiffs’ reliance on their Response to Defendants’ Motion for Summary Judgment, Defendants incorporate the facts and arguments as set forth in their Motion and Brief in Support of Summary Judgment (Doc. 96 and 99), Defendants’ Reply Brief in Support of Motion for Summary Judgment to be filed contemporaneously with this Reply,

¹ Local Rule 7.1(b)(1) governs non-dispositive motions, which is any motion not listed in Local Rule 7.1(c), while Local Rule 7.1(b)(2)(D) governs dispositive motions, which includes summary judgment motions.

and Defendants' Motion and Brief in Support to Exclude Testimony of Jeff Sheaman (Doc. 100 and 101) herein by reference.

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